



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRA NO. 32 OF 2014

RAPHAEL OCHIENG YONGO APPELLANT

V E R S U S

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of the Senior Principal Magistrate's Court at Siaya (Hon. J. N. Sani AG. SRM) dated the 4th April 2014 in Siaya SPMCCR. No. 34 of 2014)

J U D G M E N T

The appellant was 13th January 2014 charged with four counts of obtaining money by false pretences contrary to section 313 of the Penal Code, one count of obtaining credit by false pretences, one count of stealing contrary to section 275 of the Penal Code and three alternative counts of handling stolen property contrary to section 322 (1) (2) of the Penal Code. It was alleged and evidence was led to the satisfaction of the Court that on various dates to wit 2nd December 2013 (Count I), 9th December 2013 (Count II), 10th December 2013 (Count III) and 11th December 2013 (Count IV) he obtained 1,250/= from the complainant in Count I, 2,500/= from complainant in Count II, 1,250/= from complainant in Count III and 1,250/= from the complainant in count IV with intent to defraud by falsely pretending that he would admit their children to a college. On Count V it was alleged that on diverse dates between 12th December and 17th December at Awelo Market with intent to defraud he caused Maurice Adika Okuom to deliver goods worth 305,270/= to himself, a fact he knew or did not believe to be true. On count VI he was charged with stealing a bicycle valued at 6,000/= the property of Cornel Ng'ong'a Osore on 22nd December 2013.

After hearing and evaluating the evidence the Trial Magistrate convicted him on five of the six principal counts and sentenced him to one year imprisonment on each count. He ordered the sentences to run consecutively.

Being aggrieved the appellant filed this appeal in which he faulted the trial Magistrate for convicting him yet the charges were not proved to the standard required; for sentencing him to five years imprisonment yet he, the Magistrate was new in the case; for not explaining to him which counts he was convicted for and on which count he was acquitted and he contended that the voucher he produced was genuine and true.

At the hearing of the appeal he relied on written submissions in which he abandoned the appeal against conviction and proceeded on the ground that the sentence was harsh and excessive considering that he is 70 years old and has a clean criminal record. He contended that he is ailing and urged this Court to order that the sentences run concurrently. He reiterated this in his oral submissions.

Miss Wakio, prosecuting counsel, however opposed this, reiterating that the charges were proved beyond

reasonable doubt. She submitted that they were serious and that the appellant had taken advantage of gullible members of the public with a thirst for education. He contended that his age and health ought to have discouraged him from committing the offences and that to act as a deterrent the sentence should be enhanced. She urged the Court to dismiss the appeal.

I have considered the rival submissions carefully. The offences for which the appellant was convicted took place on different days, and the Trial Magistrate correctly imposed consecutive sentences. The sentence of one year imprisonment on each count was not excessive given the nature and circumstances of the offences committed. The accused has urged the Court to order that the sentences run concurrently but in my view that would not be warranted.

He has not placed anything before this Court to prove that he is ailing. His appeal is dismissed.

Signed, dated and delivered at Kisumu this 11th. day of June. 2015

E. N. MAINA

JUDGE

In the presence of:-

Ruto for the state

Appellant in person

Moses Okumu – CC